

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE
GEORGETOWN, DE 19947

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2

March 9, 2009

Benjamin F. Walls, III
SBI No.
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: State of Delaware v. Benjamin F. Walls, III
Def. ID No. 0303007019
Letter Opinion

Date Submitted: December 1, 2008

Dear Mr. Walls:

This is my decision on your fourth motion for postconviction relief. You were convicted of Possession of a Firearm During the Commission of a Felony, Assault in the First Degree, Possession of a Firearm by a Person Prohibited, Muzzle Loader Restrictions and Trespassing. The convictions arose out of an incident where you, while deer hunting on a foggy day, shot a high-powered rifle towards a busy highway, striking an unsuspecting motorist in the head. The Supreme Court affirmed your convictions on May 14, 2004.¹ I denied your three previous motions for postconviction relief.

You now argue that your attorney was ineffective because he allegedly did not (1) investigate and develop exculpatory evidence, (2) investigate the background of Joseph Kopera, the State of Delaware's ballistics expert, (3) submit the State's case to a meaningful adversarial challenge, and (4) exercise due diligence. Your attorney submitted an affidavit responding to your allegations. I have concluded that, given the nature of your allegations and my rulings on your previous motions

¹ 850 A.2d 287 (Del. 2004).

for postconviction relief, that an evidentiary hearing is not necessary.

Your fourth motion for postconviction relief is barred by Superior Court Criminal Rule 61(i)(1). This rule provides that a “motion for postconviction relief may not be filed more than one year after the judgment of conviction is final...”² Prior to a change in Rule 61 that became effective on July 1, 2005, the time limit to file a motion for postconviction relief was three years. The Supreme Court affirmed your convictions on May 14, 2004. Therefore, your deadline for filing a motion for postconviction relief was May 14, 2007. Your fourth motion for postconviction relief was filed on December 1, 2008, almost one and one-half years after the cut-off date. Your fourth motion for postconviction relief is also barred by Rule 61(i)(2) because all of your claims could have been raised in a prior motion for postconviction relief.

The bars to relief under Rule 61(i)(1) and (2) do not apply to a claim that the “the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, or fairness of the proceedings leading to the judgment of conviction.”³ The “miscarriage of justice” or “fundamental fairness” exception is a narrow one and has been applied only in limited circumstances, such as when the right relied upon has been recognized for the first time after a direct appeal.⁴ This exception may also apply to a claim that there has been a mistaken waiver of fundamental constitutional rights.⁵

² Superior Court Criminal Rule 61(i)(1).

³ Superior Court Criminal Rule 61(i)(5).

⁴ *Younger v. State*, 580 A.2d 552, 555 (Del. 1990), citing *Teague v. Lane*, 489 U.S. 288, 297-299 (1989).

⁵ *Webster v. State*, 604 A.2d 1364, 1366 (Del. 1992).

The procedural bar in Rule 61(i)(2) can also potentially be overcome if consideration of your claim is “warranted in the interest of justice.”⁶

You have not raised a colorable claim that requires consideration under any of these exceptions. Moreover, I have largely considered and rejected your current allegations in my rulings on your three previous motions for postconviction relief. I considered allegations one, three and four in my decisions on your first and second motions for postconviction relief and rejected them. You made allegations about Kopera’s credentials in a motion for reargument/reconsideration, which I also rejected. Most, if not all, of the allegations in your fourth motion for postconviction relief concern Kopera. I note that he never recanted his testimony. I also note that the Public Defender’s Office told you on August 11, 2008, that it had retained a forensic expert to review the trial transcripts to see if Kopera had fabricated any of his testimony. I assume that since you have not provided any more information on this that the expert’s review was not helpful to your case. Your fourth motion for postconviction relief is denied.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary’s Office
Department of Justice
Karl Haller, Esquire

⁶ See *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990); *Weedon v. State*, 750 A.2d 521, 527 (Del. 2000).